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THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.03.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.796 of 2016

P.Sundar ... Petitioner

Vs.

1.The Presiding Officer,
Labour Court,
Trichy.

2.The Management of
Young Man Christian Association (YMCA),
No.1, E.V.R.Road,
Puthur,
Trichy – 17. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records from the first respondent Labour Court relating to the impugned award dated 17.10.2014 passed by the first respondent in C.P.No.29/2010, quash the same and consequently to direct the second respondent to pay the petitioner Rs.5,16,938/- towards minimum wages and minimum bonus for the period from 31.10.1994 to 30.04.2009 together with 18% interest per annum and award cost.

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For Petitioner : No Appearance

For R-1 : Labour Court

For R-2 : Mr.K.Saravanan

ORDER

This Writ Petition is filed challenging the impugned award dated 17.10.2014 passed by the first respondent in C.P.No.29/2010 and consequently direct the second respondent to pay Rs.5,16,938/- towards minimum wages and minimum bonus for the period from 31.10.1994 to 30.04.2009 together with 18% interest per annum and award cost.

2. The petitioner was working in the second respondent Association and was terminated from service on 31.10.1994. Hence, the petitioner had raised Industrial Dispute in I.D.No.400/1995 which was allowed setting aside the termination order vide award dated 19.08.1999 and directed the second respondent to reinstate the petitioner with continuity of service, backwages and attendant benefits. The second respondent had challenged the same in W.P.No.

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13025 of 2000 and interim order dated 14.03.2001 was passed in W.M.P. No. 18818 of 2000 directing the second respondent to pay Rs.864/- as wages under Section 17B of the I.D. Act and further directed to deposit Rs.63,764/-. Thereafter the petitioner was permitted to withdraw 25% of the same and the petitioner withdrew Rs.15,941/-. The second respondent vide letter dated 04.07.2001 directed the petitioner to join the service. The petitioner has joined and again requested for medical leave and the same was granted. In the meanwhile, the second respondent filed W.M.P.No.26618 of 2001 to modify the order dated 14.03.2001 alleging that the petitioner was working at another concern namely CSI Super Bazar Office at Trichy – 2. The contention of the petitioner is that he was not working and the said statement is incorrect. But the Hon'ble Court has modified 17B wages by holding that the second respondent is not liable to pay the same. Thereafter, the second respondent discontinued to pay the said wages from September 2001 onwards. Finally, the Writ Petition in W.P.13025 of 2000 was dismissed by upholding the award of the first respondent. In the meanwhile, the petitioner had attained superannuation on 08.04.2009. Hence, this Court directed the respondents to pay backwages from the date of dismissal till the retirement. But the second respondent did not pay the same. Hence, the petitioner approached by filing

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C.P.No.29 of 2010 praying to compute backwages and bonus payable for the period from 31.10.1994 to 30.04.2009 The said C.P. was dismissed. Aggrieved over the same, the present Writ Petition is filed.

3. The second respondent has filed a counter stating that since the petitioner was gainfully employed as peon in CSI Super Bazar Office, there is no question of backwages for the period where he was gainfully employed. There cannot be any double employment and double wages for the said period. Moreover, there is no pre-existing right to claim any relief of such backwages. In fact, the petitioner was reinstated as per the award of the Labour Court dated 19.08.1999. Therefore, there is no question of backwages as claimed by the petitioner. Since the petitioner was gainfully employed elsewhere, moreover the petitioner inspite of granting reinstatement by the second respondent was frequently absenting himself by reporting atleast one or two days, thereafter absented himself.

4. Even according to the petitioner as per his affidavit in paragraph 10, the petitioner was frequently absented himself by producing medical certificate. Therefore, the petitioner has not worked during that period in the second

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respondent Institution. As per *"No Work No Pay"* principle, the petitioner is not entitled to any backwages. Therefore, this Court is confirming the order of the Labour Court.

5. Hence, this Writ Petition is dismissed. There shall be no order as to costs.

13.03.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

The Presiding Officer,
Labour Court,
Trichy.

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S.SRIMATHY, J.

Nsr

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